

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

THOMAS EVENSTAD,

Case No. 20-cv-864 (SRN/LIB)

Plaintiff,

v.

REPORT AND RECOMMENDATION

PAUL SCHNELL et al.,

Defendants.

This matter comes before the undersigned United States Magistrate Judge pursuant to a general assignment made in accordance with the provision of 28 U.S.C. § 636, and upon Plaintiff Thomas Evenstad's Application to Proceed in District Court Without Prepaying Fees or Costs. [Docket No. 2].

In an Order dated May 14, 2020, this Court ordered Plaintiff to pay an initial partial filing fee of \$12.67. [Docket No. 5]. The Court gave Plaintiff until June 13, 2020, to pay the fee. (*Id.*). In an Order dated December 3, 2020, this Court noted that Plaintiff had not paid the initial partial filing fee. [Docket No. 17]. However, this Court further noted that Plaintiff had filed at least four address-change notices, and at least some of those address changes caused other documents in the present case to be returned to the Court as undeliverable when the Court attempted to mail those other documents to Plaintiff. Therefore, out of an abundance of caution, the Court gave Plaintiff one final opportunity to pay this action's partial filing fee. This Court ordered Plaintiff to pay the initial partial filing fee of \$12.67 by January 4, 2021. (Order [Docket No. 17]). Plaintiff was cautioned that if he failed to comply with the Court's directive it would recommend dismissing this action without prejudice for failure to prosecute. See, Fed. R. Civ. P. 41(b).

That deadline has now passed, and Plaintiff has not paid the initial partial filing fee. Accordingly, this Court now recommends, in accordance with the December 3, 2020, Order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. See, e.g., Henderson v. Renaissance Grand Hotel, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

Therefore, based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT** this action be **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: February 1, 2021

s/ Leo I. Brisbois
 Leo I. Brisbois
 United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See Local Rule 72.2(b)(2).* All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).